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Attorneys for Defendant
JOHN WOHLER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ENRIQUE AYALA-CANJURA,

Plaintiff,

v.

CITY OF EAST PALO ALTO, a
municipality; RONALD L. DAVIS; an
individual; J. WOHLER, an individual;
SHANTE WILLIAMS; an individual;
ANGEL M. SANCHEZ, an individual; and
DOES 1 - 10,

Defendants.

CASE NO.: C08-01714 SBA

**DEFENDANT JOHN WOHLER'S
ANSWER TO PLAINTIFF'S
COMPLAINT**

COMES NOW DEFENDANT, JOHN WOHLER, an individual, in response to plaintiff's
Complaint, admits, denies and alleges as follows:

1. Answering paragraph 1 of the Complaint, Defendant lacks sufficient information and
belief upon which to base an answer, and, for that reason, denies generally and specifically each and
every allegation contained therein.

2. Answering paragraph 2 of the Complaint, Defendant admits the allegations therein.

3. Answering paragraph 3 of the Complaint, Defendant admits the allegations therein.

4. Answering paragraph 4 of the Complaint, Defendant admits the allegations therein.

5. Answering paragraph 5 of the Complaint, Defendant lacks sufficient information and

1 belief upon which to base an answer, and, for that reason, denies generally and specifically the
2 allegations contained therein.

3 6. Answering paragraph 6 of the Complaint, Defendant lacks sufficient information and
4 belief upon which to base an answer, and, for that reason, denies generally and specifically the
5 allegations contained therein.

6 7. Answering paragraph 7 of the Complaint, Defendant admits that venue is proper.

7 8. Answering paragraph 8 of the Complaint, Defendant admits that venue is proper.

8 9. Answering paragraph 9 of the Complaint, specifically denies all these allegations.

9 10. Answering paragraph 10 of the Complaint, defendant admits that Officer Williams
10 handles the police dog. Defendant specifically denies all other allegations.

11 11. Answering paragraph 11 of the Complaint, Defendant admits that verbal warnings were
12 issued. As to all other allegations, defendant lacks sufficient information and belief upon which to
13 base an answer, and, for that reason, denies generally and specifically the other allegations contained
14 therein.

15 12. Answering paragraph 12 of the Complaint, Defendant denies that plaintiff was not
16 fleeing the officers in that he refused to comply with their orders. As to all other allegations,
17 Defendant lacks sufficient information and belief upon which to base an answer, and, for that reason,
18 denies generally and specifically the other allegations contained therein.

19 13. Answering paragraph 13 of the Complaint, Defendant specifically denies all these
20 allegations.

21 14. Answering paragraph 14 of the Complaint, Defendants specifically deny all these
22 allegations.

23 15. Answering paragraph 15 of the Complaint, Defendant specifically denies all these
24 allegations.

25 16. Answering paragraph 16 of the Complaint, answering defendant incorporates by
26 reference its responses to Paragraphs 1 through 15, inclusive, as if said responses were fully set forth
27 herein.

28 17. Answering paragraph 17 of the Complaint, Defendant lacks sufficient information and

1 belief upon which to base an answer, and, for that reason, denies generally and specifically the
2 allegations contained therein.

3 18. Answering paragraph 18 of the Complaint, defendant admits that the officers were
4 responding to a call.

5 19. Answering paragraph 19 of the Complaint, Defendant specifically denies all these
6 allegations.

7 20. Answering paragraph 20 of the Complaint, Defendant specifically denies all these
8 allegations.

9 21. Answering paragraph 21 of the Complaint, Defendant specifically denies all these
10 allegations.

11 22. Answering paragraph 22 of the Complaint, Defendant specifically denies y all these
12 allegations.

13 23. Answering paragraph 23 of the Complaint, Defendant specifically denies all these
14 allegations.

15 24. Answering paragraph 24 of the Complaint, answering defendant incorporates by
16 reference his responses to Paragraphs 1 through 23, inclusive, as if said responses were fully set forth
17 herein.

18 25. Answering paragraph 25 of the Complaint, Defendant specifically denies all these
19 allegations.

20 26. Answering paragraph 26 of the Complaint, Defendant specifically denies all these
21 allegations.

22 27. Answering paragraph 27 of the Complaint, Defendant specifically denies all these
23 allegations.

24 28. Answering paragraph 28 of the Complaint, answering defendant incorporates by
25 reference his responses to Paragraphs 1 through 27, inclusive, as if said responses were fully set forth
26 herein.

27 29. Answering paragraph 29 of the Complaint, Defendant specifically denies all these
28 allegations, and specifically denies all allegations in parts a-e.

1 30. Answering paragraph 30 of the Complaint, Defendant specifically denies all these
2 allegations.

3 31. Answering paragraph 31 of the Complaint, Defendant specifically denies all these
4 allegations, and specifically denies all allegations in parts a-e.

5 32. Answering paragraph 32 of the Complaint, Defendant specifically denies all of these
6 allegations.

7 33. Answering paragraph 33 of the Complaint, Defendant specifically denies y all these
8 allegations.

9 34. Answering paragraph 34 of the Complaint, Defendant specifically denies all these
10 allegations.

11 35. Answering paragraph 35 of the Complaint, answering defendant incorporates by
12 reference his responses to Paragraphs 1 through 34, inclusive, as if said responses were fully set forth
13 herein.

14 36. Answering paragraph 36 of the Complaint, Defendant lacks sufficient information and
15 belief upon which to base an answer, and, for that reason, denies generally and specifically the
16 allegations contained therein.

17 37. Answering paragraph 37 of the Complaint, Defendant lacks sufficient information and
18 belief upon which to base an answer, and, for that reason, denies generally and specifically the
19 allegations contained therein.

20 38. Answering paragraph 38 of the Complaint, Defendant specifically denies any shooting.

21 39. Answering paragraph 39 of the Complaint, Defendant specifically denies all these
22 allegations.

23 40. Answering paragraph 40 of the Complaint, Defendant specifically denies all these
24 allegations.

25 41. Answering paragraph 41 of the Complaint, Defendant specifically denies all these
26 allegations.

27 42. Answering paragraph 42 of the Complaint, Defendant specifically denies all these
28 allegations.

1 43. Answering paragraph 43 of the Complaint, Defendant specifically denies all these
2 allegations.

3 44. Answering paragraph 44 of the Complaint, Defendant lacks sufficient information and
4 belief upon which to base an answer, and, for that reason, denies generally and specifically the
5 allegations contained therein.

6 45. Answering paragraph 45 of the Complaint, answering defendant incorporates by
7 reference his responses to Paragraphs 1 through 44, inclusive, as if said responses were fully set forth
8 herein.

9 46. Answering paragraph 46 of the Complaint, Defendant lacks sufficient information and
10 belief upon which to base an answer, and, for that reason, denies generally and specifically the
11 allegations contained therein.

12 47. Answering paragraph 47 of the Complaint, Defendant lacks sufficient information and
13 belief upon which to base an answer, and, for that reason, denies generally and specifically the
14 allegations contained therein.

15 48. Answering paragraph 48 of the Complaint, Defendant specifically denies any shooting.

16 49. Answering paragraph 49 of the Complaint, Defendant specifically denies all these
17 allegations.

18 50. Answering paragraph 50 of the Complaint, Defendant specifically denies all these
19 allegations.

20 51. Answering paragraph 51 of the Complaint, Defendant specifically denies y all these
21 allegations.

22 52. Answering paragraph 52 of the Complaint, Defendant specifically denies all these
23 allegations.

24 53. Answering paragraph 53 of the Complaint, Defendant specifically denies all these
25 allegations.

26 54. Answering paragraph 54 of the Complaint, Defendant specifically denies these
27 allegations.

28 55. Answering paragraph 55 of the Complaint, Defendant specifically denies all these

1 allegations.

2 56. Answering paragraph 56 of the Complaint, Defendant specifically denies all these
3 allegations.

4 57. Answering paragraph 57 of the Complaint, Defendant lacks sufficient information and
5 belief upon which to base an answer, and, for that reason, denies generally and specifically the
6 allegations contained therein.

7 58. Answering paragraph 58 of the Complaint, answering defendant incorporates by
8 reference his responses to Paragraphs 1 through 57, inclusive, as if said responses were fully set forth
9 herein.

10 59. Answering paragraph 59 of the Complaint, Defendant lacks sufficient information and
11 belief upon which to base an answer, and, for that reason, denies generally and specifically the
12 allegations contained therein.

13 60. Answering paragraph 60 of the Complaint, Defendant lacks sufficient information and
14 belief upon which to base an answer, and, for that reason, denies generally and specifically the
15 allegations contained therein.

16 61. Answering paragraph 61 of the Complaint, Defendant specifically denies all these
17 allegations.

18 62. Answering paragraph 62 of the Complaint, Defendant specifically denies all these
19 allegations.

20 63. Answering paragraph 63 of the Complaint, Defendant specifically denies all these
21 allegations, and specifically deny the allegations in subparts a-e.

22 64. Answering paragraph 64 of the Complaint, Defendant specifically denies all these
23 allegations.

24 65. Answering paragraph 65 of the Complaint, Defendant specifically denies all these
25 allegations, and specifically deny the allegations in subparts a-e.

26 66. Answering paragraph 66 of the Complaint, Defendant specifically denies all these
27 allegations.

28 67. Answering paragraph 67 of the Complaint, Defendant specifically denies all these

1 allegations.

2 68. Answering paragraph 68 of the Complaint, Defendant specifically denies all these
3 allegations.

4 69. Answering paragraph 69 of the Complaint, Defendant specifically denies all these
5 allegations.

6 70. Answering paragraph 70 of the Complaint, Defendant specifically denies all these
7 allegations.

8 71. Answering paragraph 71 of the Complaint, Defendant lacks sufficient information and
9 belief upon which to base an answer, and, for that reason, denies generally and specifically the
10 allegations contained therein.

11 72. Answering paragraph 72 of the Complaint, answering defendant incorporates by
12 reference his responses to Paragraphs 1 through 71, inclusive, as if said responses were fully set forth
13 herein.

14 73. Answering paragraph 73 of the Complaint, Defendant lacks sufficient information and
15 belief upon which to base an answer, and, for that reason, denies generally and specifically the
16 allegations contained therein.

17 74. Answering paragraph 74 of the Complaint, Defendant lacks sufficient information and
18 belief upon which to base an answer, and, for that reason, denies generally and specifically the
19 allegations contained therein.

20 75. Answering paragraph 75 of the Complaint, Defendant specifically denies all these
21 allegations.

22 76. Answering paragraph 76 of the Complaint, Defendant specifically denies all these
23 allegations.

24 77. Answering paragraph 77 of the Complaint, Defendant specifically denies all these
25 allegations.

26 78. Answering paragraph 78 of the Complaint, Defendant specifically denies all these
27 allegations.

28 79. Answering paragraph 79 of the Complaint, Defendant specifically denies all these

1 allegations.

2 80. Answering paragraph 80 of the Complaint, Defendant lacks sufficient information and
3 belief upon which to base an answer, and, for that reason, denies generally and specifically the
4 allegations contained therein.

5 81. Answering paragraph 81 of the Complaint, answering defendant incorporates by
6 reference his responses to Paragraphs 1 through 80, inclusive, as if said responses were fully set forth
7 herein.

8 82. Answering paragraph 82 of the Complaint, Defendant lacks sufficient information and
9 belief upon which to base an answer, and, for that reason, denies generally and specifically the
10 allegations contained therein.

11 83. Answering paragraph 83 of the Complaint, Defendant lacks sufficient information and
12 belief upon which to base an answer, and, for that reason, denies generally and specifically the
13 allegations contained therein.

14 84. Answering paragraph 84 of the Complaint, Defendant specifically denies all these
15 allegations.

16 85. Answering paragraph 85 of the Complaint, Defendant specifically denies all these
17 allegations.

18 86. Answering paragraph 86 of the Complaint, Defendant specifically denies all these
19 allegations.

20 87. Answering paragraph 87 of the Complaint, Defendant specifically denies all these
21 allegations.

22 88. Answering paragraph 88 of the Complaint, Defendant lacks sufficient information and
23 belief upon which to base an answer, and, for that reason, denies generally and specifically the
24 allegations contained therein.

25 89. Answering paragraph 89 of the Complaint, answering defendant incorporates by
26 reference his responses to Paragraphs 1 through 88, inclusive, as if said responses were fully set forth
27 herein.

28 90. Answering paragraph 90 of the Complaint, Defendant lacks sufficient information and

1 belief upon which to base an answer, and, for that reason, deny generally and specifically the
2 allegations contained therein.

3 91. Answering paragraph 91 of the Complaint, Defendant lacks sufficient information and
4 belief upon which to base an answer, and, for that reason, deny generally and specifically the
5 allegations contained therein.

6 92. Answering paragraph 92 of the Complaint, Defendant specifically denies all these
7 allegations.

8 93. Answering paragraph 93 of the Complaint, Defendant specifically denies all these
9 allegations.

10 94. Answering paragraph 94 of the Complaint, Defendant specifically denies all these
11 allegations.

12 95. Answering paragraph 95 of the Complaint, Defendant specifically denies all these
13 allegations.

14 96. Answering paragraph 96 of the Complaint, Defendant specifically denies all these
15 allegations.

16 97. Answering paragraph 91 of the Complaint, Defendant lacks sufficient information and
17 belief upon which to base an answer, and, for that reason, denies generally and specifically the
18 allegations contained therein.

19 Answering plaintiffs' prayers of the Complaint, Defendant specifically denies y all these
20 allegations.

21 AFFIRMATIVE DEFENSES

22 AS A FIRST AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
23 thereof, this answering defendant alleges that said Complaint fails to state a claim upon which relief
24 can be granted.

25 AS A SECOND AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
26 action thereof, this answering defendant alleges that the injuries and damages Plaintiff complains of,
27 if any, resulted from the acts and/or omissions of others, and without any fault on the part of this
28 answering Defendant.

1 AS A THIRD AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
2 thereof, this answering defendant alleges that their actions were undertaken in good faith and with the
3 reasonable belief that said actions were valid, necessary and constitutionally proper.

4 AS A FOURTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
5 action thereof, this answering defendant alleges that his acts were privileged under applicable statutes
6 and case law.

7 AS A FIFTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
8 thereof, this answering defendant alleges that plaintiff has failed to allege and/or have not stated facts
9 sufficient to show an affirmative link between defendants and the acts which allegedly violated
10 Plaintiff's rights.

11 AS A SIXTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
12 thereof, this answering defendant alleges that Plaintiff failed to mitigate his damages, if any.

13 AS A SEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
14 action thereof, this answering defendant alleges that plaintiff's Complaint is barred by the applicable
15 Statute of Limitations.

16 AS AN EIGHTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
17 action thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine
18 of laches.

19 AS A NINTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
20 thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine of
21 unclean hands.

22 AS A TENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of action
23 thereof, this answering defendant alleges that the Complaint is barred by the equitable doctrine of
24 estoppel.

25 AS AN ELEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
26 of action thereof, this answering defendant alleges that plaintiff has waived his rights to bring this
27 action against him.

28 AS A TWELFTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of

1 action thereof, this answering defendant alleges that Plaintiff at all times had actual and/or
2 constructive knowledge of the circumstances upon which plaintiff's Complaint is based. Plaintiff
3 expressly accepted those circumstances and thereby ratified the conduct of which Plaintiff complained
4 of.

5 AS A THIRTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
6 of action thereof, this answering defendant alleges that the Complained of conduct is privileged under
7 California Civil Code §47 and applicable case law.

8 AS A FOURTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
9 of action thereof, this answering defendant alleges that any damages sustained by plaintiff were either
10 fully or in part the fault of others, whether that fault be the proximate result of negligence, strict
11 liability, breach of warranty, breach of contract, or any other type of fault caused by persons, firms,
12 corporations or entities, other than this answering defendant, and that said negligence or fault
13 comparatively reduces the percentage of fault or negligence, if any, by this answering defendant.

14 AS A FIFTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
15 action thereof, this answering defendant alleges that plaintiff was himself careless and negligent in and
16 about the matters alleged in the Complaint and that said carelessness and negligence on plaintiff's own
17 part proximately contributed to plaintiff's loss and damage, if any there were. Under the doctrine of
18 *Li v. Yellow Cab* (1975) 532 P.2d 1226, 119 Cal.Rptr. 858, plaintiff's contributory negligence shall
19 reduce any and all damages sustained by said plaintiff.

20 AS A SIXTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause of
21 action thereof, this answering defendant alleges that plaintiff was actively negligent in and about the
22 matters alleged in the Complaint and is thereby barred from any recovery.

23 AS A SEVENTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged cause
24 of action thereof, this answering defendant is informed and believes and thereon alleges that plaintiff,
25 with full appreciation of the particular risks involved, nevertheless knowingly and voluntarily assumed
26 the risks and hazards of the incident complained of and the damages, if any, resulting therefrom.

27 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE to the Complaint, defendant is informed
28 and believes and thereon alleges that defendant is immune, and their the conduct privileged under

1 California Government Code §800 et. seq., including, but not limited to Sections 815, 820.2, 820.4,
2 820.6 and 844.6.

3 AS A NINETEENTH AFFIRMATIVE DEFENSE to the Complaint, defendant is informed
4 and believes and thereon alleges that defendant's conduct was not motivated by evil motive or intent,
5 nor reckless or callous indifference to the rights of others, thus punitive damages are not award-able
6 against defendant.

7 AS A TWENTIETH AFFIRMATIVE DEFENSE to the Complaint, defendant is informed and
8 believes and thereon alleges that defendant is entitled to a qualified immunity because defendant did
9 not violate clearly established statutory or constitutional rights of which a reasonable person or
10 reasonable officer would have been aware.

11 AS A TWENTY-FIRST AFFIRMATIVE DEFENSE to the Complaint, defendant is informed
12 and believes and thereon alleges that defendant JOHN WOHLER, an individual, did not commit a
13 constitutional violation against plaintiff, caused by a policy, custom, or practice.

14 AS A TWENTY-SECOND AFFIRMATIVE DEFENSE to the Complaint, defendant is
15 informed and believes and thereon alleges that defendant officers, public employees, are not liable for
16 any alleged injuries sustained by plaintiff, as his alleged acts or omissions were committed in the
17 execution or enforcement of the law, while exercising due care. (California Government Code §820.4)

18 AS A TWENTY-THIRD AFFIRMATIVE DEFENSE to the Complaint, defendant is informed
19 and believes and thereon alleges that plaintiff failed to exhaust his administrative remedies including,
20 but not limited to, those pursuant to Government Code §900 through §935, et seq.

21 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF this answering defendant
23 alleges that plaintiff failed to file a claim pursuant to the California Tort Claims Act.

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1 WHEREFORE, this answering defendant prays that plaintiff take nothing from this defendant
2 by way of his Complaint, for attorneys fees and costs of suit incurred herein, and for such other and
3 further relief as the court deems just and proper. This answering defendant requests a jury trial.
4

5 DATED: August 20, 2008

CLAPP, MORONEY, BELLAGAMBA
and VUCINICH

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8 By:


JEFFREY M. VUCINICH
PATRICK R. CO
Attorneys for Defendant
JOHN WOHLER

ENRIQUE AYALA-CANJURA v. CITY OF EAST PALO ALTO, et al.
 Unites States District Court, Northern District of California Case C08-01714 SBA

PROOF OF SERVICE

I, the undersigned, hereby declare that I am over the age of eighteen years and not a party to the within action. My business address is 1111 Bayhill Drive, Suite 300, San Bruno, CA 94066. On the date indicated below, I served the within:

DEFENDANT JOHN WOHLER'S ANSWER TO PLAINTIFF'S COMPLAINT

on the parties in this action by transmitting a true copy of the foregoing document(s) in the following manner:

| | |
|--|--|
| Stephen Shaiken, Esq. Law Offices of Stephen Shaiken 170 Columbus Avenue, Suite 100 San Francisco, CA 94133-5102 Tel: (415) 248-1012 Fax: (415) 248-0019 <u>Attys for Plaintiff ENRIQUE AYALA-</u> <u>CANJURA</u> | |
|--|--|



(BY UNITED STATED MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the address listed above and (specify one).

(1) ☐ deposited the seal envelope with the United States Postal Service, with the postage fully pre-paid.

(2) ☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.



(BY PERSONAL SERVICE) I personally delivered the documents to the persons at the addresses as set forth above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) for a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.



(BY FAX TRANSMISSION) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers set forth above. No error was reported by the fax machine that I used. A copy of the record of transmission, which I printed out, is attached.



(BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons set forth above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.



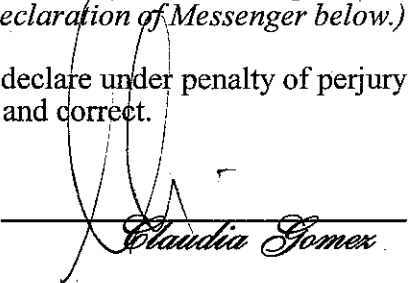
(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a Court order or an

1 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
2 documents to be sent to the persons at the e-mail addressed as noted above. I did not
3 receive, within a reasonable time after the transmission, any electronic message or other
4 indication that the transmission was unsuccessful.



6 (BY MESSENGER SERVICE) I served the documents by placing them in an envelope or
7 package addressed to the persons at the addresses as noted above and providing them to a
8 professional messenger service for service. *(A declaration by the messenger must
9 accompany this Proof of Service or be contained in the Declaration of Messenger below.)*

10 Executed on August 20, 2008 at San Bruno, California. I declare under penalty of perjury
11 under the laws of the State of California that the foregoing is true and correct.

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Claudia Gomez